IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO.200 (S/S) OF 2006

Smt. Mamta Arya W/o Late Harish Chandra Chauniyal
R/o Village Berikhatta, Jwahar Jyoti, Damuwadhunga,
Haldwani District Nainital

……. Petitioner.

Versus

1. State of Uttaranchal through Secretary, Forest Govt. of Uttaranchal at Dehradun.
2. Principal Chief Conservator of Forest, Uttaranchal at Dehradun.
3. Additional Principal Chief Conservator of Forest, Wildlife, Uttaranchal at Nainital.
4. Director, Corbett National Park, Ramnagar, District Nainital.

……..Respondents.

24.02.2006

Sri B.D. upadhyaya, learned counsel for the petitioner.
Sri Nanak Chand Gupta, Learned standing counsel for the respondents.

Hon'ble Rajesh Tandon, J.

Heard Sri B.D. Upadhyaya, Learned Counsel for the petitioner and and Sri N.C. Gupta, Learned Standing Counsel for the respondents.

By the present writ petition, the petitioner has prayed for a writ of mandamus commanding the respondent No.4. to consider the representation of the petitioner as contained in paragraph 7 of the writ petition.

Briefly stated the husband of the petitioner was appointed as Class IV employee on daily wage basis in March, 1994 and since then he was continuously working on daily wages in the Forest Department. All of a sudden the husband of the petitioner died on 08.02.2005. Immediately before his death i.e. on 08.02.2005 he was working in Kalagarh range of the Forest Department. After the death of the husband of the Petitioner,

she has submitted a representation dated 10.09.2005 to respondent No. 4 for appointment on compassionate ground.

Rules 3, 4 & 5 of the U.P. Recruitment of Dependants of Government Servants Dying In Harness Rules 1974 are quoted below:

"Rule 3. ***Application of the rules*** *– These rules shall apply to recruitment of dependents of the deceased Government servants to public services and posts in connection with the affairs of State of Uttar Pradesh except services and posts which are within the purview of the Uttar Pradesh Public Service Commission.*

Rule 4. ***Overriding effect of these rules*** *– These rules and any orders issued thereunder shall, have effect notwithstanding anything to the contrary contained in any rules, regulations or orders in force at the commencement of these rules.*

Rule 5. ***"[Recruitment of a member of the family of the deceased]***

(1) In case a Government servant dies in harness after the commencement of these rules and the spouse of the deceased Government servant is not already employed under the Central Government or a State Government or a Corporation owned or controlled by the Central Government or a State Government, one member of his family who is not already employed under the Central Government or a State Government or a Corporation owned or controlled by the Central Government or a State Government shall on making an application for the purposes, be given a suitable employment in Government service on a post expect the post which is within the purview of

the Uttar Pradesh Service Public Service Commission, in relaxation of the normal recruitment rules if such person –

(1) fulfils the educational qualification prescribed for the post,

(2) is otherwise qualified for Government service, and

(3) makes the application for employment within five years from the date of the death of the Government servant;

Provided that where the State Government is Satisfied that the time limit fixed for making the application for employment causes undue hardship in any particular case, it may dispense with or relax the requirement, as it may consider necessary for dealing with the case in a just and equitable manner.

(2) As far as possible, such an employment should be given in the same department in which the deceased Government Servant was employed prior to his death."

The Apex Court in the case of ***Sushma Gosain Vs. Union of India and others (1989) 4 SCC 468*** *has held as under: -*

"We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant.

In the case of ***Umesh Kumar Nagpal Vs. State of Haryana (1994) 4 SCC 138*** *after relying upon the judgment of* ***Sushma Gosain v. Union of India (1989) 4 SCC 468*** *it has been held by the Apex Court as under:-*

"The whole object of granting compassionate employment in thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to; be offered to the eligible member of the family."

Therefore, as will appear from the aforesaid judgment that the object of the grant of compassionate appointment is to enable the family to tide over the sudden crisis. The object is to help the deceased family from starvation and not to make a selection. In the same judgment it has also been observed as under:-

"It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned."

As will appear from the aforesaid decision that the appointment on compassionate ground should not be delayed as it being not a recruitment but its object is to help the deceased family from starvation and further to save from the hardship caused to the family after after the death of the bread earner.

In view of the aforesaid facts and circumstances, the respondent No. 4 is directed to consider the representation of petitioner dated 10.09.2005 within a period of 6 weeks in accordance with law.

The writ petition is disposed of. No. order as to costs.

(Rajesh Tandon, J.)

24.02.2006

Jain